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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,486	01/18/2002	John D. Phillips	24457B	1435

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EXAMINER

A, PHI DIEU TRAN

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/051,486

Applicant(s)

PHILLIPS, JOHN D.

Examiner

Phi D A

Art Unit

3637

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver et al (5666776) in view of Hannah et al (D336347) and Corbin et al (4274243).

Weaver et al (below) shows a laminated roofing shingle having an overlay(20) having an underside and a plurality of spaced apart tabs ( 36), each one of the tabs (36) having a leading edge (see below), the tabs defining openings adjacent the tabs, an underlay (50) attached to the underside of the overlay to cooperatively form the laminated roofing shingle, the underlay having a leading edge (52), a second shadow line (56), a remaining portion between the leading edge of the underlay and the second shadow line, the leading edge of the underlay generally co-aligning with the leading edge of the tabs, the underlay having a portion exposed through the openings defined adjacent the tabs, a layer of granules disposed on the underlay in a manner whereby the second shadow line of the underlay is substantially darker than the granules on the remaining portion of the underlay, said overlay and said underlay are each formed from a base material comprising fiberglass mat that has been coated with asphalt, the granules on the second shadow line being black granules (col 4 line 5).



It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Weaver et al to show the tab having a first shadow line and a remaining portion as taught by Hannah et al, a layer of granules disposed on the first shadow line of the tabs and on the remaining portion of the tabs in a manner whereby the first shadow line of the tabs

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being substantially darker in color than the remaining portion of the tabs as taught by Corbin et al, the granules on the first shadow line being black granules because forming the tabs with a first shadow line and a layer of darker color granules than that of the remaining portion would enable the formation of an aesthetic appearance to the shingles as disclosed by Hannah et al and Corbin et al.

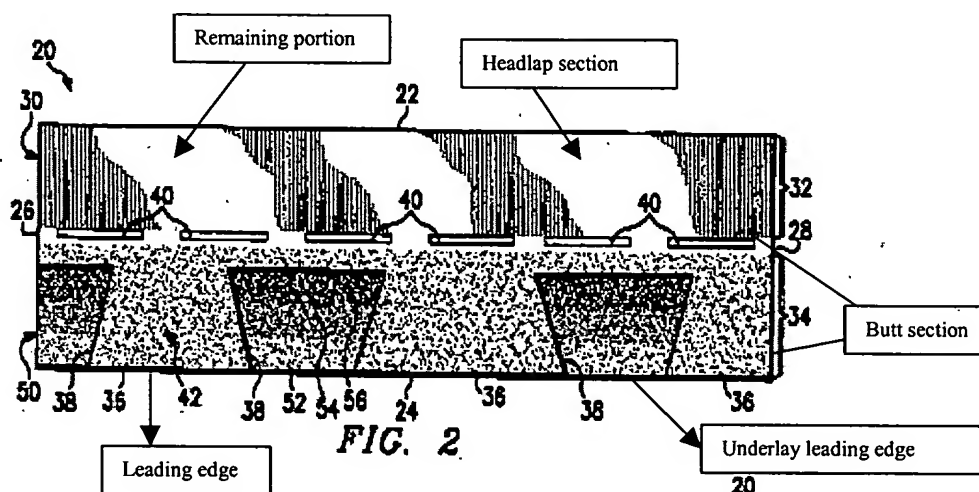
Per claims 2, 3, 6 Weaver et al as modified shows the granules on the first shadow line and the granules on the shadow line on the trailing edge of the tabs being generally uniform in color, the shadow line on the trailing edge of the tabs being substantially narrow relative to the shadow line on the trailing edge of the underlay in combination with other claimed limitations.

3. Claims 7-11, 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver et al (5666776) in view of Hannah et al (D336347) and Corbin et al (4274243).

Weaver et al (below) shows a laminated roofing shingle comprising an overlay having an underside, headlap section (sections comprise of 30 or 32), a plurality of spaced apart tabs (36) extending from the headlap section, the headlap section having a leading edge (the leading edge of 30 or 32), each one of the tabs having a leading edge (36), an outer surface, an underlay (50) attached to an underside of the overlay to cooperatively form the laminated roofing shingle, the underlay having an outer surface, a leading edge, a trailing edge, a second shadow line (56) and a remaining portion (54) between the leading edge of the underlay and the second shadow line, the tabs and the leading edge of the headlap section defining openings, the leading edge of the underlay generally co-aligning with the leading edge of the tabs, the second shadow line and the remaining portion of the underlay being on the outer surface of the underlay, the second shadow line extending from the trailing edge of the underlay to the remaining portion of the underlay, the

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underlay having a portion exposed through the openings defined by the tabs and the leading edge of the headlap section, the second shadow line being exposed through the opening and adjacent the leading edge of the headlap section, a layer of granules disposed on the underlay in a manner whereby the second shadow line (56) is substantially darker than the granules on the remaining portion of the underlay, the overlay and the underlay each being formed from a base material comprising a fiberglass mat that has been coated with asphalt, the granules on the granules on the second shadow line being black, a second shadow line (56).



Weaver et al does not show the tab having a first shadow line and a remaining portion, said first shadow line and the remaining portion being on the outer surface of the tabs, the first shadow line extending from the leading edge of the tabs to the remaining portion of the tabs, a layer of granules disposed on the first shadow line of the tabs and on the remaining portion of the tabs in a manner whereby the first shadow line of the tabs is substantially darker in color than the granules on the remaining portion of the tabs.

Weaver discloses granules of a wide range of colors from white and black to various shades of red, green, brown and any combination thereof may be used to provide a roof having the desired color shingle, the granules being applied to the tabs.

Hannah et al (figure 23) shows strips with tabs with a first shadow line (the darken part at the beginning of the tab and a remaining portion to project an aesthetic appearance.

Corbin et al discloses granules with dark color being deposited on the surface of a shingle to form color bands.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Weaver et al to show the tab having a first shadow line and a remaining portion, said first shadow line and the remaining portion being on the outer surface of the tabs as taught by Hannah et al, the first shadow line extending from the leading edge of the tabs to the remaining portion of the tabs, a layer of granules disposed on the first shadow line of the tabs and on the remaining portion of the tabs in a manner whereby the first shadow line of the tabs is substantially darker in color than the granules on the remaining portion of the tabs as taught by Corbin et al because forming the tabs with a first shadow line and a layer of darker color granules than that of the remaining portion would enable the formation of an aesthetic appearance to the shingles as disclosed by Hannah et al and Corbin et al.

Per claim 21, Weaver et al as modified shows the leading edge granules being darker than the remaining portion having granules thereon.

Per claims 8, 11, Weaver et al as modified shows the granules on the first shadow line and the granules on the shadow line on the trailing edge of the tabs being generally uniform in

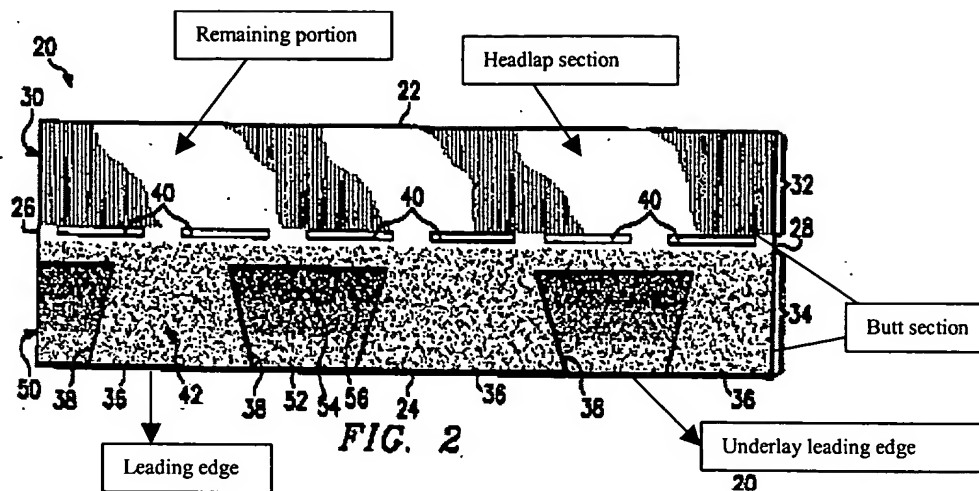
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color, the shadow line on the trailing edge of the tabs being substantially narrow relative to the shadow line on the trailing edge of the underlay in combination with other claimed limitations.

4. Claims 24, 26-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver et al (5666776) in view of Hannah et al (D336347) and Corbin et al (4274243).

Weaver et al (below) shows a laminated roofing shingle having a headlap section and a butt section (the section starting below 30 or 32) comprising an overlay having a tab (36), the tab having an outer surface with a trailing edge adjacent the headlap section and a leading edge (36) spaced from the trailing edge, the tab having a width, an underlay (50) attached to an underside of the overlay, the underlay having an outer surface, the underlay outer surface positioned adjacent the tab with a trailing edge (26) adjacent the headlap section, a leading edge spaced from the trailing edge and first colored granules (42) adhered to the outer surface of the tab adjacent the leading edge of the tab to produce a first colored portion, second colored granules (the part around the openings 40) adhered to the outer surface of the tab separated from the leading edge (36) of the tab by the first colored granules to produce a second colored portion that is different coloration or shade than the first colored portion, the second colored granules having a different coloration or shade than the first colored granules, third colored granules (56) adhered to the trailing edge of the outer surface of the underlay to provide a third colored portion, fourth color granules (52) adhered adjacent the leading edge of the outer surface of the underlay having different coloration or shade than the third colored granules, ,





the third colored granules (56) form a shadow line adjacent the trailing edge of the outer surface of the underlay, the third colored granules comprise darker granules than the fourth colored granules, the first and third colored granules comprise black colored granules, a second tab (the next tab), the second tab adjacent the outer surface of the underlay, the second tab having sixth colored granules (42) forming a shadow line adjacent a leading edge of the second tab.

Weaver et al does not show said first colored granules form a shadow line adjacent the leading edge of the tab across substantially the entire width of the tab, the first colored granules (42) comprise darker granules than the second colored granules, the first colored granules comprise black colored granules, the second tab having sixth colored granules (42) forming a shadow line adjacent a leading edge of the second tab.

Weaver discloses granules of a wide range of colors from white and black to various shades of red, green, brown and any combination thereof may be used to provide a roof having the desired color shingle, the granules being applied to the tabs.

Hannah et al (figure 23) shows strips with tabs with a first shadow line (the darken part at the beginning of the tab and a remaining portion to project an aesthetic appearance.

Corbin et al discloses granules with dark color being deposited on the surface of a shingle to form color bands.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Weaver et al to show the first colored granules form a shadow line adjacent the leading edge of the tab across substantially the entire width of the tab, the first colored granules comprise darker granules than the second colored granules, the first colored granules comprise black colored granules, the second tab having sixth colored granules forming a shadow line adjacent a leading edge of the second tab because having the first colored granules form a shadow line adjacent the leading edge of the tab across substantially the entire width of the tab, the first colored granules comprise darker granules than the second colored granules, the first colored granules comprise black colored granules, the second tab having sixth colored granules forming a shadow line adjacent a leading edge of the second tab would form an aesthetic appearance to the shingles as disclosed by Hannah et al and Corbin et al

5. Claims 25, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver et al (5666776) in view of Hannah et al (D336347) and Corbin et al (4274243).

Weaver et al as modified shows all the claimed limitations except for fifth colored granules adhered to the outer surface of the tab separated from the first and sixth colored granules by the second colored granules, the fifth colored granules having different coloration or shade than the second colored granules and forming a shadow line adjacent the headlap section.

Weaver et al further discloses individual shingles being manufactured in a variety of weights and colors being well known, a color gradient or gradation can be put on portions of the shingle to create the illusion of thickness or depth on a relatively flat surface.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Weaver et al's modified structures to show fifth colored granules adhered to the outer surface of the tab separated from the first colored granules by the second colored granules, the fifth colored granules having different coloration or shade than the second colored granules and forming a shadow line adjacent the headlap section because having a color gradient on the shingle would create the illusion of thickness or depth on a relatively flat surface as taught by Weaver et al.

6. Claims 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver et al (5666776) in view of Hannah et al (D336347) and Corbin et al (4274243).

Weaver et al as modified shows all the claimed limitations. The claimed method steps of making a laminated roofing shingle would have been the obvious method steps of making Weaver et al's modified laminated shingle.

7. Claims 34-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver et al (5666776) in view of Hannah et al (D336347) and Corbin et al (4274243).

Weaver et al as modified shows all the claimed limitations. The claimed method steps of making a laminated roofing shingle would have been the obvious method steps of making Weaver et al's modified laminated shingle.

#### ***Response to Arguments***

8. Applicant's arguments filed 2/4/05 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the

teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine is found in the references themselves as stated above.

With respect to applicant's argument that Hannah does not show tabs with a first shadow line and a remaining portion, examiner respectfully disagrees. As pointed out in the office action above, Hannah figure 23 shows tabs a first shadow line (the darkened part at the beginning of the tab) and a remaining portion. The tabs illustrate the different regions with different coloring schemes for aesthetic appearances. Applicant's statements that Hannah's tabs being made of an overlay and underlay with coloring, do not prevent the fact that the tabs show the coloring as claimed. The arguments are thus moot.

With respect to claim 12, the combination of the references shows all the claimed structural limitations including the granules being applied to a leading edge of tabs so that the leading edge of the tabs being generally darker in color than a remaining portion of the tabs. The claimed method steps thus would have been the obvious method steps of making Weaver et al's modified structures as stated above. The arguments are thus moot.

With respect to claims 21, 23, examiner respectfully points out that Hannah teaches tabs having the leading edge being generally darker than a remaining portion of the overlay as shown in figure 23. Applicant's statements that Hannah's tabs being made of an overlay and underlay with coloring, do not prevent the fact that the tabs show the coloring as claimed. The arguments are thus moot.

With respect to claims 24, 36-32, examiner respectfully points out that Hannah shows tabs with two different colored portions as in figure 23. Applicant's arguments that the different colors are on different layers of the tabs, do not prevent the fact that the tabs show different coloring schemes. The modification of Weaver with Hannah and Corbin thus shows the limitations as claimed. The arguments are thus moot.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

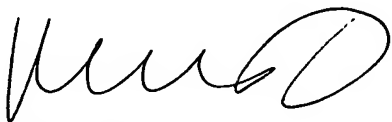
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Tuesday, Thursday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phi Dieu Tran A

5/16/05